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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 846,800	04 30 2001	Cathy A. Lynn	LYN01-002P	5176

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EXAMINER

LAWRENCE JR, FRANK M

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 08/23/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

7C-7

Office Action Summary

Application No.

09/846,800

Applicant(s)

LYNN, CATHY A.

Examiner

Frank M. Lawrence

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the new recitations in claims 1, 14 and 19 that the scenting member does not require activation does not have antecedent basis in the specification.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 14, 19 and their dependents are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The new limitations that the scent "does not require activation" or a scent element "not requiring activation" by manual means are considered new matter because they are not described in the original disclosure.

4. Claims 1, 14 and 19 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The means of "activation" that is avoided by the present invention is not clear in the original disclosure. Activation could pertain to the manual operation of a resistive heating

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element for activating a scent means, or the process of sintering an odor adsorbent to give it a higher adsorptive capacity by removing minute moisture deposits, among other things.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by West (5,572,800; figures; col. 3, lines 17-30).

7. West ('800) teaches an air freshener dispensing attachment for a hair dryer, comprising a fragrance element (40) having a frame (42,44,45) that is inserted into a cylindrical body (20) for attachment to a hair dryer.

8. Claims 1, 2, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Russo (5,649,370; figures; col. 2, line 28 to col. 3, line 38).

9. Russo ('370) teaches a fragrance dispenser for a hair dryer, comprising a frame member (52) for holding a porous scent cartridge (44), and a hook and loop attachment member (40) for fixing the frame to a hair dryer, wherein the scent cartridge includes a scented layer (46) maintained between first and second porous sides.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of West or Russo in view of Wonka et al. (5,701,681; figure 4; col. 5, lines 44-55).

12. Either one of West or Russo disclose all of the limitations of the claims except that the scenting means is attached to the inlet opening of a blow dryer. Wonka et al. ('681) disclose a hair dryer having a filter attached to the inlet opening. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the blow dryers of either one of West or Russo by attaching the scenting means anywhere along the flow of air through the dryer in order to conform to design or aesthetic limitations as desired by a user.

13. Claims 1-5, 7-10, 13-16 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDowell (5,273,690; figures; col. 2, line 59 to col. 3, line 36; col. 3, line 66 to col. 4, line 21) in view of Vick et al. (5,698,166; figures; col. 1, lines 46-52; col. 3, lines 8-25).

14. McDowell ('690) discloses an air freshener device for a ventilation duct, comprising a porous scent member including scent strips (37) maintained between fabric layers (38,41) which are held in a frame (36), a rigid second "U-shaped" frame (35) for insertion of the scent member, and hook and loop attachment means (45,46) for fixing the frames to the opening of a vent duct having slotted openings, wherein the second frame (35) forms a peripheral wall extending from the vent duct opening and having an end aperture for receiving the scent member. The "U" shape of the second frame (35) provides retaining means that transverse opposing portions of the wall for maintaining the scent member as described in claim 20. The instant claims differ from the disclosure of McDowell ('690) in that the scent does not require manual activation and that

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scent is applied to the scent member by immersion in a liquid composition that is solidified upon withdrawal.

15. Vick et al. ('166) disclose a scented air freshening device for a filter comprising a porous substrate (11) that contains a solid residue (12), resulting from drying a fragrant liquid solution that is applied to the substrate. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the device of McDowell ('690) by substituting the scent members of Vick et al. ('166) in order to provide a scent member that does not interfere with the flow of air through the a circulation system and continuously disperses scent without the need for manual activation by a user.

16. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDowell in view of Vick et al. as applied to claim 1 above, and further in view of Ward (5,087,273; figures; col. 3, line 62 to col. 4, line 63).

17. McDowell in view of Vick et al. discloses all of the limitations of the claim except that the scent element is spherical. Ward ('273) discloses an air freshener for attachment to a filter of a ventilation duct, comprising a packet of particulate beads. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the device of McDowell ('690) in view of Vick et al. ('166) by including the scented beads of the Ward ('273) device in order to provide a fragrant material that has increased surface area, allowing for improved volatilization and greater distribution of scent into an air circulation system with increased longevity of the device.

18. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDowell in view of Vick et al. as applied to claim 1 above, and further in view of Frigon (4,563,333; figures; col. 2, lines 18-25).

19. McDowell ('690) in view of Vick et al. discloses all of the limitations of the claims except that the frame is made of cardboard or plastic. Frigon ('333) discloses a deodorizing fitting for air filters, comprising a cardboard frame (12) for enclosing a scent material that is attached to a filter in a ventilation system. Although the primary references do not disclose a specific material for the frame, it is submitted that one having ordinary skill in the art at the time of the invention would have been motivated to modify the frame to include any appropriately rigid material, such as the cardboard frame of Frigon ('333) in order to provide a frame that will effectively mount the scent member to a filter or opening of a ventilation system while being simple and economical to manufacture.

Response to Arguments

20. Applicant's arguments filed July 24, 2002 have been fully considered but they are not persuasive. Applicant argues that the examiner has grouped a plurality of claims together in a common rejection without a reasoning for each rejection applicable to each claim, however it is submitted that every limitation that has been recited in the claims has been addressed in the anticipatory and obviousness claim rejections. No particular instances have been pointed out. Applicant also argues that West fails to disclose attaching means connected to the frame, however the main body section (20) of the attachment device anticipates this feature.

21. Applicant further argues that Russo fails to disclose attaching means on a periphery of the device, however the frame (52) encloses the scent cartridge (44) at its periphery. Applicant also

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argues that Russo does not disclose first and second layers enclosing the scenting element, however the cartridge (44) includes a scented layer (46) maintained between first and second porous sides (see figure 4). Applicant also argues that claim 7 contains numerous limitations for the attachment means not taught by Russo, however none of the limitations are specifically addressed, so they can not be confirmed. Finally, regarding West and Russo, applicant argues that neither patent discloses a scenting device connected to the inlet opening of a blow dryer. The examiner agrees with this argument and submits a new rejection using the Wonka et al. patent to address this amended feature (see paragraph 12 above).

22. Regarding the 35 USC 102(b) rejection over McDowell, applicant argues that the patent fails to disclose a scent element that does not require manual activation. The examiner agrees with this argument, however the limitation is considered to new matter that has not been described or enabled in the original disclosure (see paragraphs 3 and 4 above). The office is required to consider such limitations; therefore a new rejection over McDowell in view of Vick et al. is presented to address the device having a scent element not requiring manual activation. Regarding claim 8, applicant argues that McDowell does not disclose retention of the attaching means on an air filter within an air flow conduit, however the frame (36) is connected to a filter made up of fabric layers (38, 41) within a ventilation system (see figure 1).

23. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5

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USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, a motivation to combine the teachings of McDowell with those of Vick et al., Ward, and Frigon are given in paragraphs 15, 17 and 19 above, respectively.

24. Applicant also argues that Vick et al. does not disclose immersing the first member in a liquid composition having a scent, however it is submitted that such a limitation is purely functional and would not result in a structural feature that patentably distinguishes over the cited prior art. The scent member of Vick et al. will have the same structure as the instant scent member and will function in the same manner.

25. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

26. In response to applicant's argument based upon the age of the references, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

27. Applicant also argues that it would not have been obvious to use the spherical elements of Ward because they are in close proximity, however it is submitted that such an arrangement would still provide a surface contact area that is many times the area of a unitary body of the

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same volume, leading to improved volatilization and greater distribution of scent. Applicant further argues that the combination of Frigon and McDowell will not disclose the limitations of claim 17, however Frigon discloses the use of cardboard as a frame material, providing a suggestion of the type of material commonly used in such devices. The disclosure of plastic in addition to cardboard to disclose the claim limitations is not required because claim 17 recites "a rigid material selected from a group consisting of cardboard and plastic."

Conclusion

28. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank M. Lawrence whose telephone number is 703-305-0585. The examiner can normally be reached on Mon-Thurs 7:30-5:00; alternate Fridays 7:00-4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Simmons can be reached on 703-308-1972. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

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August 22, 2002

